

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEROY STRAYHORN,

Plaintiff,

v.

Case No. 11-15216
Honorable Patrick J. Duggan

PATRICIA CARUSO, KAREN SUE
MALICOAT, R.N., DR. GEORGE
PRAMSTALLER, DR. ZAKIUDDIN A.
KHAN, CORRECTIONAL MEDICAL
SERVICES, PRISON HEALTH SERVICES,
INC., JOHN DOE, JANE DOE, and
RUSSELL MALICOAT,

Defendants.

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**OPINION AND ORDER GRANTING DEFENDANT CORRECTIONAL
MEDICAL SERVICES, INC.'S MOTION TO DISMISS**

On November 28, 2011, Plaintiff commenced this civil rights action pursuant to 42 U.S.C. § 1983, alleging that Defendants were deliberately indifferent to his serious medical needs in violation of his Eighth Amendment rights. On March 12, 2012, Defendant Correctional Medical Services, Inc. ("CMS") filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). This matter has been referred for all pretrial matters to Magistrate Judge R. Steven Whalen.

On February 7, 2013, Magistrate Judge Whalen issued a Report and Recommendation (R&R) in which he recommends that this Court grant CMS' motion to dismiss. (ECF No. 70.) As Magistrate Judge Whalen indicates in his R&R, Plaintiff

failed to respond to CMS' motion to dismiss despite being ordered to file a response by May 29, 2012. (*See* ECF No. 31.) Magistrate Judge Whalen finds that the only factual allegations in Plaintiff's Complaint concerning CMS and its employee, Dr. DeMassi, involve the alleged failure to authorize cardiac testing in April 2004. (ECF No. 70 at 4.) He therefore concludes that Plaintiff's claim against CMS is barred by the applicable statute of limitations of three years. (*Id.*) Magistrate Judge Whalen further concludes that Plaintiff fails to allege that Dr. DeMassi declined to authorize the cardiac testing pursuant to any CMS policy to invoke supervisory liability under § 1983. (*Id.* at 5.)

At the conclusion of his R&R, Magistrate Judge Whalen informs the parties that they must file any objections to the R&R within fourteen days. (*Id.*) No objections to the R&R have been filed.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Whalen. The Court therefore adopts Magistrate Judge Whalen's R&R dated February 7, 2013.

Accordingly,

IT IS ORDERED, that Defendant Correctional Medical Services, Inc.'s motion to dismiss (ECF No. 30) is **GRANTED**;

IT IS FURTHER ORDERED, that Plaintiff's claims against Defendant Correctional Medical Services, Inc. are **DISMISSED WITH PREJUDICE** and it is dismissed as a party from this action.

Dated: March 6, 2013

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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Counsel of Record

Magistrate Judge R. Steven Whalen